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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,661	07/15/2004	Stephen George Szirmai	B-5492PCT 622001-4	5127

36716 7590 04/10/2007  
LADAS & PARRY  
5670 WILSHIRE BOULEVARD, SUITE 2100  
LOS ANGELES, CA 90036-5679

EXAMINER
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MATTER, KRISTEN CLARETTE

ART UNIT	PAPER NUMBER
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3771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/10/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/501,661	SZIRMAI, STEPHEN GEORGE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kristen C. Matter	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-18 is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-13 is/are rejected.
- 7) ☒ Claim(s) 7 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/9/2004</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 23.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 11 and 15.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the electrostatic charge generator and the base unit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to under 37 CFR 1.83(a) because they fail to show the details of the rotor or meshes as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Specification*

The disclosure is objected to because of the following informalities: on page 4, line 1, "In a first aspect" should be changed to -- A first aspect--.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, the current wording makes it unclear as to which elements are made of polymeric material.

Claims 4-6 are dependent on claim 3 and are therefore rejected for the reasons outlined above with respect to claim 3.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szirmai (US 5,463,524) in view of Sun et al. (US 5,753,302).

Regarding claim 1, Szirmai discloses an apparatus for dispersing a fine powder including a container (3), a rotor (2) rotatably mounted within the container adapted to be rotated at high speeds and having means for establishing an electric field and mechanically dispersing the contents of the container (column 2, lines 30-40), a discharge port (23) with a means (grid) to retain beads in the container. Szirmai does not disclose beads within the container. Sun et al. discloses a dispenser for electrostatically charged particles (column 2, lines 20-45) that includes a container that contains beads and dry powder (abstract). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Szirmai's device with beads as taught by Sun et al. in order to carry or break up the powder before dispensing.

Regarding claim 2, Szirmai discloses conductors 6 (charge generator) connected to an axial extending rotatable shaft portion of the rotor (Figure 1), wherein the rotor has a plurality of metal arms (column 3, line 31) that extend axially and radially.

Regarding claim 3, Szirmai discloses that the rotor can be driven at speeds in excess of 1500 rpm (column 3, line 11), a belt and pulley (17, 18) for the rotor and metal arms connected to a rotatable shaft. Szirmai is silent as to the material of the pulley and belt, however, it would

have been obvious to one of ordinary skill in the art at the time the invention was made to have made the belt and pulley of polymeric materials because these types of materials are well known as appropriate materials for use in pulley drive systems.

Regarding claim 4, Szirmai discloses the arms can be blade-like (column 3, lines 8-9).

Regarding claim 5, Szirmai is silent as to the blade having a razor sharp periphery over the majority its edge, however, it is well known that blades have cutting edges running the majority of the edge of the structures, and absent a critical teaching and/or a showing of unexpected results in the specification, it appears as though the device disclosed by Szirmai would perform equally well with blades having a razor sharp periphery over the majority their edges. As seen in Figure 2, Szirmai discloses four blades spaced uniformly around the axis of the rotor.

Regarding claim 6, Szirmai discloses wires with porcelain beads (insulating tabs) attached to each blade (Figure 2 and column 5, lines 30-45).

Regarding claim 11, Szirmai discloses the apparatus can be used as an inhaler (column 7, lines 50-55) with electrical control means (20), but does not specifically disclose a discharge duct. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided Szirmai 's container with a discharge duct or mouthpiece in order to direct the dispersed powder to a user's airways.

Regarding claim 13, the device disclosed by Szirmai has all of the structural limitations needed to perform the recited method step and is fully capable of doing so. It would have been obvious to one of ordinary skill in the art at the time the invention was made, upon seeing Szirmai's device, to perform the recited method steps of the instant claim.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szirmai and Sun et al. as applied to claim 1 above, and further in view of Gieschen et al. (US 6,971,384).

Regarding claim 9, the modified Szirmai reference does not disclose beads in the size range of 2-3 mm or the number of beads in the container. Gieschen et al. discloses an inhaler with electrostatically charged beads (column 5, lines 10-15) in the size range of 500 microns to 4mm. Also, although Gieschen et al. disclose 2-10 beads in the container, it is considered an obvious design consideration to one of ordinary skill in the art at the time the invention was made to have put any number of beads in the container depending on the size of the beads and the size of the container. Furthermore, absent a critical teaching and/or a showing of unexpected results in the specification, it appears as though the modified device would perform equally well with 50-100 beads in the container.

Regarding claim 10, the combined Szirmai and Sun et al. reference is silent as to the material of the beads. Gieschen et al. disclose the beads can be made of plastic, a resilient, insulating, and wear resistant material. See also *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960), in which the selection of a known material based on its suitability for its intended use supported a prima facie case of obviousness.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Szirmai and Sun et al. as applied to claim 1 above, and further in view of Hodson et al. (US 6,012,454). Szirmai is silent as to a detachable base unit with batteries. Hodson et al. disclose an inhalation device with batteries for driving a motor (19) located in a separate compartment (Figure 1). Furthermore, it is

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considered an obvious design consideration to use AC or DC electricity for driving a motor. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used batteries as taught by Hodson et al. to run the motor disclosed by Szirmai in order to use a DC power supply or to make the device more portable. In addition, although Hodson et al. is silent as to the base unit (compartment) being detachable, In re Dulberg, 289 F.2<sup>nd</sup> 522, 523, 129 USPQ 348, 349 (CCPA 1061) has held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose." Therefore, it would have been an obvious design consideration to one of ordinary skill in the art at the time the invention was made to have made the battery compartment detachable in order to charge the batteries or to store the device.

*Allowable Subject Matter*

Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 14-18 are allowed over the prior art of record. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose an apparatus for discharging a fine powder including a container containing beads and powder, a rotor adapted to rotate at a relatively high speed with means for establishing an electric field, and a discharge control means comprising an outer mesh layer for transmitting particles up to about 10 microns and an inner mesh layer for transmitting particles up to about 75 microns, spaced



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inwardly from the outer mesh layer by up to about 1 mm and the space containing a filtering fine powder.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Whittaker et al. (US 5,427,283) and Rand (US 7,185,648) are cited to show other electrostatic discharge devices and Gueret (US 2003/0123919) is cited to show a discharge apparatus with filtering means.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen C. Matter whose telephone number is (571) 272-5270.

The examiner can normally be reached on Monday - Friday 9-4.

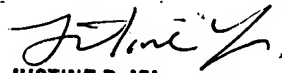
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kristen C. Matter  
Examiner  
Art Unit 3771



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4/3/07